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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

v.

RUBY McDANIEL, FRANCIS PAGNANELLI,
JOSEPH O'HARA, JOSEPH GREGG,
JAMES McWILLIAMS, WILLIAM CONLON,
EDWARD GERLACH, CHARLES RADICH,
OTTO BUCHTA, and WILLIAM RAISER,

Defendants.
-----X

#9
96 Civ. 9202 (JES)

FIRST
AMENDED COMPLAINT

Plaintiff, United States of America, alleges upon
information and belief as follows:

PRELIMINARY STATEMENT

1. This action arises from defendants' blockade of the Eastern Women's Center (the "EWC"), a reproductive health clinic in Manhattan, on July 23, 1996. Early that morning, the defendants pushed their way past a security guard, gained access to the EWC's main waiting and intake room, and blocked the clinic's doors and elevators. Five of the defendants locked themselves together to create a barricade obstructing the entrance to testing facilities and doctors' offices. Succeeding in their objective, the defendants disrupted the clinic's operations and prevented patients from obtaining services for nearly three hours until police were

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able to cut their locks and arrest and remove them. On October 28, 1996, the defendants admitted that they physically obstructed EWC patients and staff when they stipulated to facts describing their blockade contained in criminal complaints filed against them in the Criminal Court of the City of New York. Moreover, eight of the defendants have taken part in similar blockades this year at reproductive health clinics outside of New York. Because the defendants' obstruction of the EWC violated the Freedom of Access to Clinic Entrances Act of 1994 ("FACE"), 18 U.S.C. § 248, the Government seeks injunctive and monetary relief under FACE to prevent defendants' further unlawful interference with reproductive health services.

JURISDICTION AND VENUE

2. This Court has jurisdiction over this action pursuant to 18 U.S.C. § 248, and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper under 28 U.S.C. § 1391(b)(2) because the events giving rise to this complaint occurred in this district.

THE DEFENDANTS

4. Ruby McDaniel is a resident of New York who lives at 321 East 22nd Street, Apartment 2A, New York, New York 10010.

5. Francis Pagnanelli is a resident of New Jersey who lives at 1101 Avenue C, Bayonne, New Jersey.

6. Joseph O'Hara is a resident of Pennsylvania who lives at 388 Laurel Run Estates, Laurel Run, Pennsylvania, 18702.

7. Joseph Gregg is a resident of New York who lives at 17 Paula Drive, Farmingdale, New York, 11735.

8. James McWilliams is a resident of New Jersey who lives at 180 Gould Avenue, North Caldwell, New Jersey, 07006.

9. William Conlon is a resident of New York who lives at 4084 Sherrey Court, Seaford, New York, 11783.

10. Edward Gerlach is a resident of Pennsylvania who lives at 5172 Hiffletrager Road, Green Lane, Pennsylvania.

11. Charles Radich is a resident of Pennsylvania who lives at 3460 Knights Road, Bensalem, Pennsylvania, 19020.

12. Otto Buchta is a resident of New York who lives at 155 Greenwich Street, Hempstead, New York, 11550.

13. William Raiser is a resident of New York who lives at 126 Franklin Street, Endicott, New York.

FACTUAL ALLEGATIONS

I. The Eastern Women's Center

14. The EWC is located at 44 East 30th Street, New York, New York. Specializing in women's health care, the EWC provides a host of reproductive services including abortions, pregnancy testing, pre-natal care, and counselling. The EWC opens at 7:30 a.m. on weekday mornings.

15. The EWC occupies the fifth, sixth, seventh, and eighth floors of a multi-story commercial building. Patients arriving at the EWC for pre-abortion testing, counselling, and abortions proceed to the clinic's fifth floor, where the front desk and main waiting room are located. Once on the fifth floor, patients traverse a small foyer surrounding the elevator and enter the waiting room through a door that usually stands open after 7:30

a.m. (hereinafter the "front door").

16. The EWC's fifth floor waiting room contains the clinic's front desk, where clinic employees receive incoming patients, enter data into computers, access clinic records, and answer patient questions. Patients cannot see doctors or counsellors until this preliminary processing is complete.

17. There is a second door, with a glass window, at the rear of the fifth floor waiting room. This door, called the "security door" by staff, leads to doctors' offices, medical laboratories, testing facilities, and the clinic's cashier. After waiting a short period, patients are escorted through the security door to receive services. A third door (hereinafter the "side door"), by the elevator to the side of the foyer, also provides access to the section of the fifth floor containing offices, labs and testing facilities. The side door, which is locked at all times by means of a built-in combination lock, is used only by EWC staff.

18. Beginning at approximately 5:30 a.m. each weekday morning, the New York Police Department ("NYPD") stations a police officer at the 30th Street entrance to the EWC's building.

II. The July 23, 1996 Blockade

19. On July 23, 1996, at approximately 7:40 a.m., people posing as clients entered the EWC building on the ground floor and boarded an elevator with an EWC security guard, who intended to escort them to the clinic's fifth floor. Before the elevator doors closed, however, the defendants -- who had apparently entered the

building while the EWC security guard and others walked to the elevator -- rushed into the elevator. The defendants were able to enter the EWC building because no NYPD officer had arrived to take up the post at the building's 30th Street entrance.

20. As the elevator travelled to the fifth floor, some of the defendants made anti-abortion statements. These remarks, and the manner in which the defendants had entered the elevator, convinced the EWC security guard that the defendants were demonstrators intent on gaining access to the EWC.

21. Consequently, when the elevator arrived at the fifth floor, the security guard exited first and quickly attempted to close the front door and seal off the clinic. Although he reached the front door first and tried to shut it, the defendants grabbed the door before it closed, forced it open, and pushed their way past the security guard into the waiting room.

22. As the defendants entered the fifth floor waiting area, an EWC staff member closed the security door in order to protect the remainder of the clinic from the defendants.

23. Defendants McDaniel and Conlon then locked themselves together at the ankle using bicycle locks, and sat down in front of the security door.

24. At approximately the same time, Defendants Gerlach, Radich, and Raiser chained themselves together at the neck using interconnecting bicycle locks, and joined McDaniel and Conlon on the floor in front of the security door.

25. While Defendants McDaniel, Conlon, Gerlach, Radich,

and Raiser blocked the security door, Defendant Pagnanelli sat in front of the front door, and later lay down in front of the elevator, and blocked patients who arrived at the clinic's fifth floor from disembarking from the elevator. EWC employees directed these patients to go to the eighth floor instead.

26. Defendants Gregg, McWilliams, O'Hara, and Buchta, who were not locked together, blocked the side door by sitting in front of it.

27. The defendants' blocking of the security door, the front door and elevator, and side door trapped two clinic employees in the fifth floor waiting room and prevented them from providing reproductive health services.

28. After being called by an EWC employee, NYPD officers arrived at the EWC and asked the defendants to unlock themselves and leave the clinic. All defendants refused. After additional NYPD personnel arrived, officers began to cut the locks connecting some of the defendants at approximately 9:30 a.m. They worked slowly and deliberately to avoid injuring the locked defendants, and covered them with wet sheets to avoid incidental burns from the sparks sometimes generated from the lock-cutting process.

29. While the locked defendants were being disconnected, some of the defendants were verbally abusive to NYPD officers and clinic employees, whom they called "baby-killers." Some defendants also plastered anti-abortion stickers on the security door during the blockade.

30. When the locks were finally removed, all defendants

again refused to voluntarily leave the clinic. Defendants McDaniel, Conlon, Pagnanelli, Gregg, McWilliams, O'Hara, and Buchta went limp and had to be carried off the fifth floor. All defendants were removed by approximately 10:30 a.m.

31. During the blockade, the EWC directed patients to the eighth floor, where they waited in a children's waiting and play area. Until approximately 9:00 a.m., patients could not receive the preliminary processing that normally occurs on the fifth floor because the facilities on the eighth floor are insufficient for such screening, and because EWC employees who would have performed the processing were trapped by the defendants in the fifth floor waiting area.

32. Sometime after 9:00 a.m., EWC staff who had arrived during the blockade escorted some patients from the eighth floor to the seventh floor and conducted initial processing there. No patients received testing, counselling, or abortions, however, because the entrances to the offices and testing facilities on the fifth floor were blocked by the defendants. Approximately thirty-seven patients were delayed, through the course of the blockade, from receiving care.

33. Defendants' obstruction of the EWC rendered ingress to, and egress from, the clinic impassable and unreasonably difficult.

34. The defendants blockaded the EWC because it provides, and its patients receive, reproductive health services, and with the intent to interfere with EWC patients and staff

providing and obtaining such services.

III. The Defendants' Stipulation to the Facts of their Blockade

35. Following their removal from the EWC on July 23, 1996, the defendants were arrested by NYPD officers and charged with Obstruction of Access to Reproductive Health Services in violation of section 8-803 of Title 8 of New York City's Administrative Code, a local ordinance modeled on FACE that prohibits physical obstruction of reproductive health services. The defendants were also charged with Obstructing Governmental Administration in the second degree, Resisting Arrest, and Criminal Trespass in the third degree.

36. On October 28, 1996, the defendants appeared in Criminal Court of the City of New York for disposition of the criminal charges against them. The charges were contained in three criminal complaints sworn by NYPD officer Thomas Schick that, together, encompass all defendants.

37. At their October 28, 1996 appearance, all defendants, through counsel, stipulated to the facts contained in the criminal complaints sworn against them. Specifically, each defendant admitted that he or she "did physically obstruct or block . . . other person[s] from entering into or exiting from the entryway or exit of a reproductive health care facility or the premises where such facility is located" by blocking an EWC door or elevator.

38. On December 6, 1996, the defendants were convicted of New York state criminal charges arising from the blockade.

IV. The Defendants' Other 1996 Blockades

39. On January 16, 1996, Defendants Gerlach, McWilliams, O'Hara, Pagnanelli, Radich, and Raiser physically obstructed ingress to the Reproductive Health and Counselling Center in Upland, Pennsylvania -- a facility providing reproductive health services as defined by FACE -- by standing, sitting, and/or lying in front of the entrances to the clinic. Defendants' intentional blockade of the Reproductive Health and Counselling Center, which lasted most of the day, prevented patients from receiving, and clinic employees from providing, reproductive health services.

40. On August 7, 1996, two weeks and one day after their blockade of the EWC, Defendants McDaniel, Pagnanelli, Raiser, and Gregg gained entrance to Metropolitan Medical Associates in Englewood, New Jersey -- a facility providing reproductive health services as defined by FACE -- and chained themselves together to obstruct ingress to the clinic. Defendants' intentional blockade of Metropolitan Medical Associates prevented patients from receiving, and clinic employees from providing, reproductive health services.

41. On August 29, 1996, Defendants McDaniel, Radich, Gerlach, and O'Hara physically obstructed ingress to Access Health in Downers Grove, Illinois -- a facility providing reproductive health services as defined by FACE -- by sitting in front of the clinic's front and rear entrances. Defendants' intentional blockade of Access Health prevented patients from receiving, and clinic employees from providing, reproductive health services.

42. Defendants McDaniel, Gregg, McWilliams, O'Hara, Gerlach, Radich and Raiser have been arrested before 1996 for obstructing access to reproductive health services.

CAUSES OF ACTION FOR VIOLATIONS OF 18 U.S.C. § 248

43. Plaintiff repeats and realleges paragraphs 1 through 42 as if fully set forth herein.

44. Defendants have, by physical obstruction, intentionally interfered with and/or attempted to interfere with patients and employees of the EWC because they were obtaining and/or providing reproductive health services.

45. Defendants, by their actions as described in paragraphs 19 through 34 of this complaint, have violated 18 U.S.C. § 248.

46. Unless enjoined by this court, the defendants will continue to violate 18 U.S.C. § 248.

PRAYER FOR RELIEF

47. WHEREFORE, plaintiff respectfully requests judgment:

a. granting a permanent injunction enjoining defendants, their agents, and all individuals acting in concert with defendants or their agents, from:

1. impeding or obstructing any form of ingress to or egress from the Eastern Women's Center;

2. being located on the private property of the Eastern Women's Center;

3. violating, or aiding and abetting the violation of, 18 U.S.C. § 248 anywhere and in any way;

4. attempting to take -- or inducing, encouraging, directing, aiding, or abetting in any manner others to take -- any of the actions set forth in subsections 46(a)(1) through 46(a)(3) of this Complaint,

b. granting statutory damages against each defendant in the amount of \$5,000 under 18 U.S.C. § 248(c)(2)(B);


c. assessing civil penalties against each defendant in the amount of \$10,000 under 18 U.S.C. § 248(c)(2)(B);

d. requiring defendants to pay the costs plaintiff incurs in bringing this action; and

e. granting such further relief as the Court deems just.

January 31, 1996
New York, New York

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Southern District of New York

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CERTIFICATE OF SERVICE

I, MANUEL BERMUDEZ, am employed in the United States Attorney's Office, Southern District of New York.

On the 31ST day of JANUARY, 1997 I served a copy of the GOVTS FIRST AMENDED COMPLAINT -

by placing the same in a properly post-paid envelope addressed:

FOUR (4) PARTIES LISTED ON ATTACHED LIST

I then sealed the said envelope and placed the same in a mail box maintained by the United States Postal Service for deposit of mail at 100 Church Street, New York, N.Y. 10007.

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED: JANUARY 31, 1997

A handwritten signature in cursive script, reading "Manuel Bermudez", written over a horizontal line.

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